

Docket AUS920010254US1

Appl. No.: 09/935,413
Filing Date: 08/23/2001**RECEIVED**
CENTRAL FAX CENTER**DEC 11 2006****REMARKS****STATUS OF CLAIMS, POSTURE OF CASE AND SUMMARY OF
RESPONSE HEREIN**

Claims 1-21 were originally submitted and are pending in the application. All the pending claims stand rejected. Office action of August 9, 2006, (the "present Office Action").

The present Office Action rejects claims 8-21 under 35 USC 112, second paragraph, as being indefinite on grounds that the "preamble of claims 8 and 15 indicate comparing suppliers, but the claim limitations do not address suppliers." Applicant respectfully disagrees for reasons explained herein below, but submits responsive amendments herein to claims 8 and 15, merely in order to cooperatively expedite passage of the application to allowance. (Herein, the term "Applicant" is used merely for convenience, regardless of the number of inventors.)

The present Office Action rejects all claims under 35 USC 103(a) as being unpatentable over U.S. Patent Application 2002/0029154 ("Majoor") and Official notice. Applicant herein respectfully traverses the assertion of Official notice. Applicant also herein amends and cancels claims and submits new claims to even more particularly distinguish the invention.

In addition, Applicant herein amends certain claims as set out herein above to conform them to the claim amendments discussed herein below or to correct informalities. Claims 8 and 15 are also amended herein to more certainly ensure the claims describe statutory subject matter.

Docket AUS920010254US1

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CENTRAL FAX CENTER**DEC 11 2006****ARGUMENTS****Claims 8-21: rejections under 35 USC 112, second paragraph**

The Office action contends that "comparing suppliers," as stated in the preambles of claims 8 and 15, is indefinite because the subsequent claim limitations in the bodies of the claims do not address suppliers. Applicant respectfully submits that the claims do clearly address suppliers.

More specifically, the body of claim 8 addresses suppliers numerous times. Claim 8 ("... first instructions for sending survey questions for receipt by *supplier* computer systems . . . second instructions for . . . execution by the *supplier* computer systems . . ." (emphasis added)). The body of claim 8 also states that "the *supplier* computer systems . . . return *supplier survey answers* . . ." Claim 15 has similar language.

Also, the body of original claim 8 addresses evaluating *supplier* survey answers, which are defined as data elements, and original claim 12 clearly points out the evaluating includes "comparing . . . to corresponding *evaluator* requirements" (emphasis added). Original claims 15 and 19 have similar language.

Although Applicant disagrees with the rejection for the reasons explained above, Applicant nevertheless submits amendments herein to claims 8 and 15 in order to cooperatively expedite passage of the application to allowance. Specifically, the preamble of claim 8 is herein amended to state "A computer program product for *evaluating supplier surveys*" (emphasis added). Amended claim 15 has similar language. No new matter is added, since the original claims clearly provide support for the amendments.

Claims 1-21: rejections under 35 USC 103(a)

Regarding the rejection of claim 1, the Office action relies upon Majoor and Official notice, citing Majoor, paragraphs 14-16 and Figure 2. In the cited passage of Majoor, a first computer analyzes answers sent back from a second computer and selects and sends next questions to the second computer responsive to those received answers. See also, Majoor, paragraph 5 ("... questions are presented by a rule server based upon prior responses or knowledge of a user" and "the rule server dynamically determines the number and arrangement of questions presented").

Docket AUS920010254US1

Appl. No.: 09/935,413
Filing Date: 08/23/2001

Certain aspects of Majoor and present application are clearly different. For example, in contrast with Majoor, original claim 1 states that the method includes "sending programming instructions for . . . execution . . . causing the supplier computer systems to return supplier survey answers to a server." The original claim also states that the executing causes the answers to be "defined in a certain format as data elements included in responding documents," and that the method includes "parsing the data elements from the responding documents." The claim continues, stating that the method also includes "evaluating the data elements."

The present Office Action acknowledges these differences, stating that Majoor does not teach "sending *programming instructions* for . . . execution by the supplier computer systems." However, the Office action recites Official notice that it is well known for computers to request survey responses via computer programmed instructions.

Also, the present Office Action acknowledges that Majoor does not teach returning "answers . . . defined in a certain format as data elements included in responding documents." But the Office action recites Official notice that it is well known for computers to format survey answers to provide means for easily gathering the information from the survey such that the information is correctly routed to the proper channel and so that the answers are more user-friendly as they are easier to find and read.

Official notice

Applicant respectfully submits that the reliance upon Official notice is improper. Applicant submits that the claimed "sending programming instructions for . . . execution . . . causing the supplier computer systems to return supplier survey answers to a server" where the executing causes the answers to be "defined in a certain format as data elements included in responding documents" is not capable of instant and unquestionable demonstration as being well-known. See MPEP 2144.03 (As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute."). This is particularly certain given that the present Office action does not provide specific factual findings predicated on sound technical and scientific reasoning to support the conclusion of common knowledge. *Id.*

Docket AUS920010254US1

Appl. No.: 09/935,413
Filing Date: 08/23/2001

Applicant submits that the claimed "sending programming instructions for . . . execution . . . for causing the supplier computer systems to return supplier survey answers . . . defined in a certain format as data elements included in responding documents" is not common knowledge at least because the art of record does not teach this, and hereby requests that the Examiner cite a prior art reference for this teaching relied upon for rejection of the claims in the present application.

For at least these reasons, Applicant submits that claims 1, 8 and 15 are allowable.

Amended claims, issue one: The art and well-known teachings do not teach or suggest *sending survey questions as question sets, including answers for user input selection, for display by browsers of the supplier computer systems and that the programming instructions are sent for receipt and execution as applets by the browsers of the supplier computer systems, where the instructions are for causing the supplier computer systems to return supplier survey answers to a server responsive to the applets processing user inputs and the survey questions, as now claimed.*

Also, to further distinguish the claimed invention from what is well-known, Applicant herein also submits amendments to the independent claims to set out that the survey question are sent as "question sets, including answers for user input selection" and that the survey questions that are sent are "for displaying by browsers of the supplier computer systems," that the programming instructions are sent "for receipt and execution as applets by the browsers of the supplier computer systems," and that the instructions are "for causing the supplier computer systems to return supplier survey answers to a server responsive to the applets processing user inputs and the survey questions." No new matter is added, since the original application provides support for the amendments. See application, FIG. 1 (HTML doc 131 with included applet 120 on server 110 and browser 160 for displaying doc 131 and executing applet 120. See also application, page 6, line 6 - page 8, line 4.

For at least these reasons, Applicant submits that claims 1, 8 and 15 are allowable.

Docket AUS920010254US1

Appl. No.: 09/935,413
Filing Date: 08/23/2001

Amended claims, issue two: The art and well-known teachings do not teach or suggest *receiving survey inputs from one or more evaluators and that the step of evaluating the data elements comprises comparing the data elements by a computer application to corresponding ones of the evaluator requirements, wherein the data elements provide quantitative values and the evaluator inputs define evaluator requirements as quantitative values for the respective data elements, such a evaluator requirement quantitative value indicating a desired amount for the corresponding data element, and wherein the comparing produces quantitative correlations between respective evaluator requirements and data elements, as now claimed.*

In order to expedite allowance, Applicant also herein submits amendments to particularly point out further aspects of the present application that are even more clearly different than what is taught or suggested by the cited art. According to the present application, survey inputs are received from one or more evaluators, where the evaluator inputs define evaluator requirements. See original claim 6. Evaluating the data elements of survey responses from suppliers includes comparing the data elements to corresponding evaluator requirements, which is done by a computer application. See original claim 5 (comparing the data elements to corresponding evaluator requirements) and present application, page 9, lines 13-17 evaluator 420 function provided by server application 108). The data elements provide quantitative values. See present application, page 9, line 21 - page 10, line 9. The evaluator inputs define evaluator requirements as respective data elements. Present application, page 9, lines 1-12. The evaluator requirement data elements have quantitative values indicating respectively desired amounts for the corresponding supplier answer data elements. See present application, page 10, lines 1-5 (desired amount); page 10, line 19 - page 11, line 2 (required or preferred answer has a value). The comparing produces quantitative correlations between respective evaluator requirements and data elements. See, for example, present application, page 9, lines 17-20 and page 10, line 19 - page 11, line 2.

Accordingly, claim 5 is herein canceled and claim 6 is herein amended to state that the method includes "receiving survey inputs from one or more evaluators" and that the step of evaluating the data elements comprises "comparing the data elements by a computer

Docket AUS920010254US1

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application to corresponding ones of the evaluator requirements, wherein the data elements provide quantitative values and the evaluator inputs define evaluator requirements as quantitative values for the respective data elements, such a evaluator requirement quantitative value indicating a desired amount for the corresponding data element, and wherein the comparing produces quantitative correlations between respective evaluator requirements and data elements." In similar fashion, claims 12 and 19 are canceled and claims 13 and 20 are amended. No new matter is added, since the original application provides support for the amendments. See remarks in the paragraph immediately above.

The Office action contends that teaching by Majoor in paragraph 16 about reviewing answers and determining if they are "fully responsive (600)" teaches the parsing of data elements from the responding documents, as set out in original claim 1 of the present application, and teaches the comparing of data elements to corresponding evaluator requirements, as set out in original claim 5 of the present application. The Office action also contends that it is well known to receive survey inputs from an evaluator defining survey requirements. However, Applicant notes that in the teaching about "fully responsive" Majoor provides little guidance, stating, for example, that "an answer providing a residential zip code in Iowa might be identified by the rule server 104 as unresponsive if it is known the residence is located in Montana. In another example, an answer providing a residential zip code with only four digits might be identified by the rule server 104 as unresponsive, as zip codes have five digits. Accordingly, the rules check the syntax and content of the answer to ensure both are appropriate for an answer." Majoor, paragraph 21.

Thus, Majoor does not teach or suggest "receiving survey inputs from one or more evaluators" and that the step of evaluating the data elements comprises "comparing the data elements by a computer application to corresponding ones of the evaluator requirements, wherein the data elements provide quantitative values and the evaluator inputs define evaluator requirements as quantitative values for the respective data elements, such a evaluator requirement quantitative value indicating a desired amount for the corresponding data element, and wherein *the comparing produces quantitative correlations* between respective evaluator requirements and data elements" (emphasis added). Further, this is not well-known in combination with the present claims.

Docket AUS920010254US1

Appl. No.: 09/935,413
Filing Date: 08/23/2001

For at least these reasons, Applicant submits that claims 6, 13 and 20 are allowable.

Amended claims, issue three: The art and well-known teachings do not teach or suggest *the evaluator inputs include weights for the respective evaluator requirements* and that method includes *the computer application combining the correlations responsive to the weights*, as now claimed.

Further, new claims are submitted for each of the three claim sets of the present application to even more particularly distinguish the present invention. For example, new claim 22 states that "the evaluator inputs include weights for the respective evaluator requirements" and that method includes "the computer application combining the correlations responsive to the weights." New claims 23 and 24 have similar language. Applicant submits that Majoor does teach or suggest this, nor is it well-known in combination with the present claims. No new matter is added, since the original application provides support for the amendments. See present application, FIG. 6 and page 10, line 10 - page 11, line 18.

For at least these reasons, Applicant submits that claims 22-24 are allowable.

Teaching away

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Majoor does concern survey documents, but teaches that a first computer analyzes answers sent back from a second computer and selects and sends next questions to the second computer responsive to those received answers. Majoor, para. 16-17. As pointed out herein above, the claims in the present application state that questions are sent to the second computer as a question set including answers for user input selection and that the second computer returns supplier survey answers to a server responsive to an applet processing user inputs and the survey questions, where the applet is executed by a browser of the second computer. This is contrary to intervention by the first computer between questions and answers. Thus Majoor teaches away from what is claimed in the present application, and the combination is not proper.

Docket AUS920010254US1

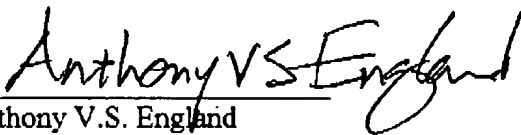
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CENTRAL FAX CENTER**DEC 11 2006****Claims 8 and 15: amendments regarding statutory subject matter**

In order to more certainly ensure the claim describes statutory subject matter, claim 8 is amended herein to recite "A computer program product stored on a tangible, computer readable medium, for evaluating supplier surveys, said computer program product having instructions for execution by a computer, which, when executed by the computer, cause the computer to implement a method." Likewise, claim 15 is amended to state that the storage device has instructions "stored thereon." No new matter is added, since the original application provides support. See present application, FIG. 1, page 6, line 6 - page 8, line 3, and page 14, line 20 - page 15, line 4.

REQUEST FOR ACTION

For the above reasons, Applicant contends the invention as set out in the claims herein above is patentably distinct, including claims 2-4 and 7, claims 9-11 and 14, and claims 16-18 and 21, which are allowable, although not discussed herein above, at least because they depend on respectively allowable independent claims. Applicant requests that Examiner grant allowance and prompt passage of the application to issuance.

Respectfully submitted,

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